STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED December 28, 2010
v	No. 294777 Oakland Circuit Court
FLIRTEE REJON TAYLOR, Defendant-Appellee.	LC No. 2009-228013-FH

Before: BECKERING, P.J., and TALBOT and OWENS, JJ.

PER CURIAM.

Plaintiff appeals as of right the dismissal of its case against defendant. Defendant was charged with possession of a firearm by a felon, MCL 750.224f, possession of less than 25 grams of heroin, MCL 333.7403(2)(a)(*v*), possession of marijuana, MCL 333.7403(2)(d), and two counts of felony firearm, MCL 750.227b. On September 30, 2009, the trial court granted defendant's motion to suppress evidence obtained as a result of an unwarranted pat-down. On October 15, 2009, the trial court granted defendant's motion to dismiss. We reverse the order granting suppression, vacate the order of dismissal, and remand for further proceedings.

At a September 30, 2009, evidentiary hearing, Officer Gary Hembree testified to the incidents that led to the pat-down search of defendant. On July 5, 2009, at approximately 2:20 a.m., Officer Hembree received a call from dispatch indicating that shots were fired by two groups of males at 34 Cadillac in Pontiac.[1] Officer Hembree testified that the location was in a high-crime area, he had been to the house on more than one occasion for domestic violence complaints, and the house was known for violent acts. Officers Hembree and Chris Miracle responded to the scene, but Officer Hembree was the first to arrive.[2] He found defendant and another male on the porch drinking alcohol. Officer Hembree, who was in full uniform, told the

[1] The dispatch was to a home near 30 Cadillac, and the only home near 30 Cadillac is 34 Cadillac.

[2] Officer Hembree testified that Officers Main and McDonald arrived later; their first names were not identified on the record.

two men why he was at the house and asked if they heard any gun shots. Defendant and the other male were "very evasive" when answering questions, acted like Officer Hembree was harassing them, and said they heard fireworks. Officer Hembree suspected that their answer was fabricated to explain away the sound of gunfire. After approximately two or three minutes and fearing for his safety, Officer Hembree felt that a weapons pat-down was necessary. Officer Miracle was present on the scene by this time and conducted the pat-down on defendant, during which he found a gun on defendant's person.

At the conclusion of the evidentiary hearing, the trial court granted defendant's motion to suppress, which resulted in plaintiff dismissing the case without prejudice because it was unable to proceed without the evidence that had been suppressed.[3]

On appeal, plaintiff argues that, under the totality of the circumstances, Officer Hembree had a reasonable suspicion to justify a limited pat-down search based on his experience and observations.

Defendant argues that the trial court did not err by suppressing the evidence. According to defendant, there was no reasonable suspicion to seize or search him because when Officer Hembree met defendant and the other individual, they were not acting intoxicated, being loud, or doing anything illegal.

We review a trial court's factual findings in a suppression hearing for clear error. *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005). However, the "'[a]pplication of constitutional standards by the trial court is not entitled to the same deference as factual findings.' Application of the exclusionary rule to a Fourth Amendment violation is a question of law that is reviewed de novo." *Id*. (citations omitted).

> To justify an investigative stop, the police must have a particularized suspicion, based on an objective observation, that the person has been, is, or is about to be engaged in some type of criminal activity. The particularized suspicion that criminal activity is afoot must derive from the police officer's assessment of the totality of the circumstances. In the course of an investigatory

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[3] In granting the motion to suppress, the trial court stated in part:

> I want to say that in terms of common sense, and in terms of the admiration of what Officer Hembree does every day, he did the common sense thing. He patted, he patted down to make sure that he was safe and that he was going home that night. As a person of this community, I have no problem with that.
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> But this is a court of law. And under the law, as circumstances presented here, there was no heightened—not heightened, but there was no reasonable suspicion for this particular pat-down, given these particular circumstances.

> stop, a police officer may conduct a reasonable search for weapons where he has reason to believe that he is dealing with an armed and dangerous individual. In determining the validity of such a search, the issue is whether a reasonably prudent person in the circumstances would be warranted in the belief that his safety or that of others was in danger. [*People v Taylor*, 214 Mich App 167, 169-170; 542 NW2d 322 (1995) (citations omitted).][4]

In determining whether an officer acted reasonably under the circumstances, "'due weight must be given, not to his inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.'" *People v LoCicero*, 453 Mich 496, 502; 556 NW2d 498 (1996), quoting *Terry*, 392 US at 27. Merely being in a high-crime area is insufficient, in and of itself, to support a finding of reasonable suspicion. *People v Nelson*, 443 Mich 626, 636-637; 505 NW2d 266 (1993). But being in a high-crime area, coupled with observing nervous or evasive behavior by the defendant and other case-specific, relevant factors may be sufficient. See *id*. See also *People v Oliver*, 464 Mich 184, 197; 627 NW2d 297 (2001).

Here, Officer Hembree was at the scene where gunshots were reported to have been fired by two groups of males. As such, he could reasonably conclude that a crime was afoot. The only open question is whether he reasonably concluded that defendant might be involved in criminal activity and potentially armed, justifying a pat-down. Officer Hembree had 13 years of police experience, knew the location to be a high-crime area, had been to the house for domestic violence incidents between defendant and his girlfriend, and was aware of prior violent acts at the house. When Officer Hembree arrived at the house late at night, shortly after gunshots were reported to be fired, he found defendant and another male on the porch, drinking alcohol. When Officer Hembree inquired about the gunshots, defendant and the other male were very evasive, acted as if he was harassing them, and claimed to have only heard fireworks.

Given that Officer Hembree encountered defendant at the scene where gunshots were reported, it was not unreasonable for him to be concerned that a gun would be found in the vicinity, which posed a potential threat to him and others. Further, given defendant's and the other male's evasive and defensive conduct in denying hearing gunshots, and in light of the totality of the circumstances, a reasonably prudent person in the same circumstances as Officer Hembree would be warranted in the belief that his safety or that of others was potentially in danger. Therefore, a limited pat-down search for weapons on defendant was justified, and the trial court erred by suppressing the evidence.

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[4] See also *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v Muro*, 197 Mich App 745, 747; 496 NW2d 401 (1993).

We reverse the order suppressing the evidence, vacate the subsequent order dismissing the case, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Michael J. Talbot
/s/ Donald S. Owens